

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 403 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KADARBHAI JUSAB KURESHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 17th December, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act. In two offences punishable under the Bombay Prohibition Act registered against the petitioner, he was found to be in possession of country liquor. Besides, two individuals, on assurance of anonymity, have given statements in respect of the nefarious activities of the petitioner and more particularly about the incidents of 28th November, 1998 and 30th November, 1998 respectively. In both the said incidents, the petitioner is alleged to have beaten the concerned witness in a public place and to have used force for creating terror and thereby causing public disturbance.

The only contention raised before me is : though the petitioner, under his representation dated 18th January, 1999 had demanded report of the chemical examination of the liquor allegedly recovered from the possession of the petitioner in the matter pending investigation, the same has not been furnished to him as yet. The contention is not answered. It can not be gainsaid that the report of the chemical examination is a vital document, without which, the petitioner could not have made an effective representation. Thereby the petitioner's right to make an effective representation is infringed. The continued detention of the petitioner is, therefore, vitiated.

Petition is allowed. The order dated 17th December, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI